

UNITED STATES BANKRUPTCY COURT

Eastern District of California

Honorable Ronald H. Sargis

Chief Bankruptcy Judge

Sacramento, California

August 31, 2021 at 1:30 p.m.

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| 1. <u>16-90157-E-7</u> DARYL FITZGERALD <u>18-9011</u> Linda Deos FITZGERALD V. TRELLIS COMPANY | CONTINUED TRIAL RESCHEDULING CONFERENCE RE: COMPLAINT 6-25-18 [1] |
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The Pretrial Conference is XXXXX.

This Adversary Proceeding is one to determine whether a student loan obligation is nondischargeable. Plaintiff-Debtor appearing in *pro se*, the parties (with the court concurring) did not set this matter for a Zoom trial while the courthouse was closed.

The Parties expressed a desire to avail themselves of a judicial mediation while the trial date was being trailed pending the reopening of the Courthouse. The court ordered the appointment of a mediation judge (after confirming with that judge he would so serve). Unfortunately, it is reported that the parties have not been able to get the mediation process started. There have been some extraordinary matters assigned to the mediation judge by the Ninth Circuit, which may play into the “challenges” presented to the parties.

At the Status Conference, the court addresses with the parties what issues remain for trial, what factual determinations would exist for the court, and how much of what remains are “merely” legal conclusions and rulings of the court.

At the Status Conference, Defendant asserted that in addition to the Vanessa student loans, it was asserted that Plaintiff-Debtor has personal loans he is obligated on. Plaintiff-Debtor stated that he has not been provided with documentation of such.

The court continued the Scheduling Conference to allow Defendant to provide documentation of the asserted personal loans of Plaintiff-Debtor and for the parties to focus on such obligations, if any, rather than the disputed Vanessa loans.

AUGUST 31, 2021 STATUS CONFERENCE

No updated pleadings were filed prior to the Status Conference. The Parties addressed the outstanding issues with the court at the hearing, reporting, **XXXXXXX**

2. [16-25089-E-13](#) **MARK/JENNIFER GALISATUS** **MOTION FOR RELIEF FROM**
[QUA-1](#) **MR. PICKLE'S FRANCHISE** **AUTOMATIC STAY O.S.T.**
SYSTEMS, LLC VS. **8-19-21 [111]**

Tentative Ruling: Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

Below is the court's tentative ruling, rendered on the assumption that there will be no opposition to the motion. If there is opposition presented, the court will consider the opposition and whether further hearing is proper pursuant to Local Bankruptcy Rule 9014-1(f)(2)(C).

Local Rule 9014-1(f)(3) Motion—Hearing Required.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, creditors, and Office of the United States Trustee on August 20, 2021. By the court's calculation, 11 days' notice was provided. The court set the hearing for August 31, 2021.

The Motion for Relief from the Automatic Stay was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(3). Debtor, creditors, the Chapter 13 Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offer opposition to the motion, the court will set a briefing schedule and a final hearing, unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion. At the hearing -----.

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| The Motion for Relief from the Automatic Stay is granted. |
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Mr. Pickle's Franchise Systems, LLC ("Movant") seeks relief from the automatic stay to allow a lawsuit against Mark Timothy Galisatus (the "Debtor") in the United States District Court for the Eastern District of California in Case No. 2:21-cv-01003-MCE-DB (the "Federal Court Litigation") to be concluded. Movant has provided the Declaration of Jeffrey H. Wolf to introduce evidence to authenticate the documents upon which it bases the claim and the obligation owed by MARK

Movant argues that the Movant’s Franchise Agreement was mutually terminated between Movant and Debtor and there had been several conversations, with no resolution, regarding Movant’s concerns of Debtor violating the Franchise Agreement, Mutual Termination Agreement, and state and federal law by ongoing use of Movant’s trade dress and trade secrets in operating Dugout Deli. Declaration, Dckt. 112. Further, Mr. Wolf’s testifies that Movant was not aware of Debtor’s bankruptcy at the time Movant filed the Federal Court Litigation on June 4, 2021 as Debtor failed to inform Movant, and the first time Movant received notice was when Debtor filed notice of bankruptcy in the Federal Court Litigation on July 29, 2021. *Id.*

Movant requests that the court annul the stay as to the District Court proceedings that predated Debtor giving Movant notice of the bankruptcy case. In making this request, Movant also asserts that the alleged improper conduct is continuing post-petition, thus the injunctive relief sought is based on continuing post-petition conduct.

CHAPTER 13 TRUSTEE’S NON-OPPOSITION

David Cusick (“the Chapter 13 Trustee”) filed a Non-Opposition on August 24, 2021. Dckt. 121.

DISCUSSION

The court may grant relief from stay for cause when it is necessary to allow litigation in a nonbankruptcy court. 3 COLLIER ON BANKRUPTCY ¶ 362.07[3][a] (Alan N. Resnick & Henry J. Sommer eds. 16th ed.). The moving party bears the burden of establishing a prima facie case that relief from the automatic stay is warranted, however. *LaPierre v. Advanced Med. Spa Inc. (In re Advanced Med. Spa Inc.)*, No. EC-16-1087, 2016 Bankr. LEXIS 2205, at *8–9 (B.A.P. 9th Cir. May 23, 2016). To determine “whether cause exists to allow litigation to proceed in another forum, ‘the bankruptcy court must balance the potential hardship that will be incurred by the party seeking relief if the stay is not lifted against the potential prejudice to the debtor and the bankruptcy estate.’” *Id.* at *9 (quoting *Green v. Brotman Med. Ctr., Inc. (In re Brotman Med. Ctr., Inc.)*, No. CC-08-1056-DKMo, 2008 Bankr. LEXIS 4692, at *6 (B.A.P. 9th Cir. Aug. 15, 2008)) (citing *In re Aleris Int’l, Inc.*, 456 B.R. 35, 47 (Bankr. D. Del. 2011)). The basis for such relief under 11 U.S.C. § 362(d)(1) when there is pending litigation in another forum is predicated on factors of judicial economy, including whether the suit involves multiple parties or is ready for trial. *See Christensen v. Tucson Estates, Inc. (In re Tucson Estates, Inc.)*, 912 F.2d 1162 (9th Cir. 1990); *Packerland Packing Co. v. Griffith Brokerage Co. (In re Kemble)*, 776 F.2d 802 (9th Cir. 1985); *Santa Clara Cty. Fair Ass’n v. Sanders (In re Santa Clara Cty. Fair Ass’n)*, 180 B.R. 564 (B.A.P. 9th Cir. 1995); *Truebro, Inc. v. Plumberex Specialty Prods., Inc. (In re Plumberex Specialty Prods., Inc.)*, 311 B.R. 551 (Bankr. C.D. Cal. 2004).

The court finds that the nature of the Federal Court Litigation warrants relief from stay for cause. Therefore, judicial economy dictates that the federal court ruling be allowed to continue after the considerable time and resources put into the matter already.

While it could be argued that the stay does not apply, given that this is being addressed on shortened time and to avoid the issue resurfacing in the District Court, the court makes this order to grant prospective relief and annulment of the stay for the acts done without knowledge of the Bankruptcy

Case, which consist of:

XXXXXXX

The court shall issue an order modifying the automatic stay as it applies to Debtor to allow Movant to continue the Federal Court Litigation. The automatic stay is not modified with respect to enforcement of the judgment against Debtor, David Cusick (“the Chapter 13 Trustee”), or property of the bankruptcy estate. Any judgment obtained shall be submitted to this court for the proper treatment of any claims arising under the Bankruptcy Code.

No other or additional relief is granted by the court.

The court shall issue an order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion for Relief from the Automatic Stay filed by Mr. Pickle’s Franchise Systems, LLC (“Movant”) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the automatic stay provisions of 11 U.S.C. § 362(a) are modified as applicable to MARK TIMOTHY GALISATUS and JENNIFER ELLEN GALISATUS (“Debtor”) to allow Movant, its agents, representatives, and successors, and trustee under the trust deed, and any other beneficiary or trustee, and their respective agents and successors to proceed with litigation in Case No. 2:21-cv-01003-MCE-DB (“District Court Action”).

IT IS FURTHER ORDERED that the automatic stay is annulled with respect to District Court action for the following acts:

XXXXXXX

IT IS FURTHER ORDERED that the automatic stay is not modified with respect to enforcement of any judgment against Debtor, David Cusick (“the Chapter 13 Trustee”), or property of the bankruptcy estate. Any judgment obtained by Movant shall be submitted to this court for the proper treatment of any claims arising under the Bankruptcy Code.

No other or additional relief is granted.

Tentative Ruling: Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court’s resolution of the matter.

Below is the court’s tentative ruling, rendered on the assumption that there will be no opposition to the motion. If there is opposition presented, the court will consider the opposition and whether further hearing is proper pursuant to Local Bankruptcy Rule 9014-1(f)(2)(C).

Local Rule 9014-1(f)(3) Motion—Hearing Required.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor’s Attorney, Chapter 13 Trustee, and Office of the United States Trustee on August 24, 2021. By the court’s calculation, 7 days’ notice was provided. The court set the hearing for August 31, 2021. Dckt. 32.

The Motion to Incur Debt was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(3). Debtor, creditors, the Chapter 13 Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offer opposition to the motion, the court will set a briefing schedule and a final hearing, unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion. At the hearing -----

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| The Motion to Incur Debt is xxxxx. |
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HEATHER ANN REALITY THORNEWOOD and LAWRENCE ALLEN WILLIS (“Debtor”) seeks permission to purchase a 2012 Kia Optima LX Hybrid, with a total purchase price of \$12,999.00 and monthly payments of \$339.41 to John Sullivan Roseville over 72 months with a 12.20% fixed interest rate. Exhibit, Dckt. 30.

The Chapter 13 Trustee, David Cusick (“Trustee”), filed a Response on August 23, 2021 stating that although the Trustee believes that the vehicle is reasonable and needed by the Debtor, Trustee is not convinced the Debtor can afford it. Dckt. 31.

DISCUSSION

A motion to incur debt is governed by Federal Rule of Bankruptcy Procedure 4001(c). *In re Gonzales*, No. 08-00719, 2009 WL 1939850, at *1 (Bankr. N.D. Iowa July 6, 2009). Rule 4001(c) requires that the motion list or summarize all material provisions of the proposed credit agreement, “including interest rate, maturity, events of default, liens, borrowing limits, and borrowing conditions.”

FED. R. BANKR. P. 4001(c)(1)(B). Moreover, a copy of the agreement must be provided to the court. *Id.* at 4001(c)(1)(A). The court must know the details of the collateral as well as the financing agreement to adequately review post-confirmation financing agreements. *In re Clemons*, 358 B.R. 714, 716 (Bankr. W.D. Ky. 2007).

Best Interest of Debtor

Here, the transaction may not be in the best interest of Debtor. The loan calls for a substantial interest charge—12.20%. Moreover, Debtor seeks approval of this transaction in case a different vehicle is not sold for them but no explanation is provided as to why that car would not be available.

At the hearing, **XXXXXXX**

~~_____ The Motion is **xxxxxx**.~~

~~The court shall issue an order substantially in the following form holding that:~~

~~_____ Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.~~

~~_____ The Motion to Incur Debt filed by HEATHER ANN REALITY THORNEWOOD and LAWRENCE ALLEN WILLIS (“Debtor”) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,~~

~~_____ **IT IS ORDERED** that the Motion is **xxxxxx**, and HEATHER ANN REALITY THORNEWOOD and LAWRENCE ALLEN WILLIS is authorized to incur debt pursuant to the terms of the agreement, Exhibit **xx**, Dekt. 30.~~

FINAL RULINGS

4. [19-21013-E-13](#) MELISSA LOVATO
[APN-1](#) Thomas Amberg
SPECIALIZED LOAN SERVICING
LLC VS.

MOTION FOR RELIEF FROM
AUTOMATIC STAY
7-27-21 [\[33\]](#)

Final Ruling: No appearance at the August 31, 2021 hearing is required.

Local Rule 9014-1(f)(1) Motion—No Opposition Filed.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, and Office of the United States Trustee on July 27, 2021. By the court's calculation, 35 days' notice was provided. 28 days' notice is required.

The Motion for Relief from the Automatic Stay has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). Failure of the respondent and other parties in interest to file written opposition at least fourteen days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (upholding a court ruling based upon a local rule construing a party's failure to file opposition as consent to grant a motion). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the non-responding parties and other parties in interest are entered. Upon review of the record, there are no disputed material factual issues, and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

Per Order of the Court, the hearing on the Motion for Relief from the Automatic Stay is continued to 1:30 p.m. on October 12, 2021, as stipulated by the parties (Dckt. 40).

5. [18-22392](#)-E-13 TONI GOODIN
[GAL-1](#) Candace Brooks
NATIONWIDE WEST LLC VS.

**MOTION FOR RELIEF FROM
AUTOMATIC STAY AND/OR MOTION
FOR RELIEF FROM CO-DEBTOR STAY
8-3-21 [\[27\]](#)**

Final Ruling: No appearance at the August 31, 2021 hearing is required.

Nationwide West LLC (“Creditor”) having filed a Withdrawal of Motion, pursuant to Federal Rule of Civil Procedure 41(a)(1)(A)(i) and Federal Rules of Bankruptcy Procedure 9014 and 7041, **the Motion for Relief from the Automatic Stay was dismissed without prejudice, and the matter is removed from the calendar.**